

9-60.000 PROTECTION OF THE INDIVIDUAL

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9-60.010

Introduction

This chapter focuses on the investigation and prosecution of a variety of crimes against individuals including kidnapping, interstate and foreign extortion, criminal solicitation, hostage taking, murder-for-hire, carjacking, and violence against women. Investigative jurisdiction is vested in the Federal Bureau of Investigation (FBI).

Supervisory jurisdiction is vested in the Terrorism and Violent Crime Section (TVCS). Attorneys in TVCS can be reached at (202) 514-0849.

9-60.020 Sentencing Enhancement -- "Three Strikes" Law

The Violent Crime Control and Law Enforcement Act of 1994 included a "Three Strikes" provision, which is now codified at 18 U.S.C. § 3559(c). Under § 3559(c) a defendant will receive mandatory life imprisonment if he or she:

- is convicted in federal court of a "serious violent felony" and
- has two or more prior convictions in federal or state courts, at least one of which is a "serious violent felony." The other prior offense may be a "serious drug offense."

On March 13, 1995, the Assistant Attorney General of the Criminal Division issued a memorandum to all United States Attorneys regarding the "Three Strikes" law.

See the Criminal Resource Manual at 1032 for the text of the memorandum.

9-60.100 Kidnapping -- 18 U.S.C. §§ 1201 and 1202

Kidnapping -- 18 U.S.C. §§ 1201, 1202	Criminal Resource Manual at 1033
Kidnapping -- Federal Jurisdiction	Criminal Resource Manual at 1034
Kidnapping -- Investigative and Supervisory Jurisdiction	Criminal Resource Manual at 1035
FBI Assistance in Missing Persons Cases	Criminal Resource Manual at 1036
24 Hours Rebuttable Presumption	Criminal Resource Manual at 1037
Kidnapping -- Penalty Provision	Criminal Resource Manual at 1038
Kidnapping -- Ransom Money	Criminal Resource Manual at 1039
Use of the Fugitive Felon Act in Parent/Child Kidnappings	Criminal Resource Manual at 1040

9-60.111 Kidnapping/Missing Persons -- Prosecution Policy

It is been the policy of the Federal Bureau of Investigation (FBI) that, except in parental kidnapping matters, every reported kidnapping in which circumstances indicate an actual abduction has taken place is afforded an immediate preliminary investigation to determine whether a full investigation under the Federal kidnapping statute is warranted.

It is the policy of the Criminal Division to review any decision made by the FBI not to conduct an investigation in those missing persons cases wherein the facts indicate possible violations of the Federal kidnapping statute. Under this policy, the FBI will refer information concerning questionable missing person cases to the Criminal Division. The Division will thoroughly review such information, and if deemed warranted, will request the FBI to commence a kidnapping investigation.

Concern as to the adequacy of the investigative guidelines in situations where much younger children are missing has prompted the FBI to adopt the practice of immediate involvement. With regard to missing children of very tender years, in many cases an abduction may be assumed, so as to warrant an immediate preliminary kidnapping investigation by the FBI.

United States Attorneys who become aware of a missing person case in their district which may involve a kidnapping should insure that such information is brought to the attention of the Criminal Division. Questions concerning this policy should be directed to attorneys of the Terrorism and Violent Crime Section (TVCS).

9-60.112 Prosecution Policy -- Allegations of "Mental Kidnapping" or "Brainwashing" by Religious Cults

In recent years, the Department has received numerous complaints alleging that members of various religious sects are victims of "brainwashing," "mind-control," or "mental kidnapping" by leaders of these groups. A typical allegation is that new members are subjected to intensive indoctrination accompanied by inadequate amounts of food and sleep, with the result that they become "programmed" to obey the wishes and commands of their leader and cease to think for themselves. As a general rule in these situations, there is no information or allegation that the "brainwashed" sect member has been physically restrained from leaving the sect.

It is the Department's position that an allegation of "brainwashing" accompanied by interstate travel would not support a prosecution under the Federal kidnapping statute. See *Chatwin v. United States*, 326 U.S. 455 (1946).

For cases involving possible violations of the peonage or involuntary servitude statutes (18 U.S.C. §§ 1581, 1583 and 1584), consult with the Involuntary Servitude Coordinators, Civil Rights Division, Criminal Section before making a prosecutive determination.

9-60.113 Prosecution Policy -- "Deprogramming" of Religious Sect Members

The Criminal Division has received a substantial number of complaints from members of various religious sects alleging that they have been abducted by their parents or persons acting on behalf of their parents for the purpose of "deprogramming."

It is a general policy of the Department not to become involved in situations which are essentially domestic relations controversies. If a parent abducts his/her adult child from a religious sect, accompanies that child throughout the "deprogramming," and there is no violence or other aggravating circumstances, these facts would weigh against Federal involvement. However, if violence or other aggravating circumstances exist, particularly where professional "deprogrammers" are involved, criminal prosecutions should be pursued if the evidence warrants.

9-60.200 Criminal Sanctions Against Illegal Electronic Surveillance

Criminal sanctions for illegal electronic surveillance can be found in 18 U.S.C. §§ 2510 to 2513, 2701, 3121, 2232(c), 2521, 1367, and 47 U.S.C. §§ 605, 553, 502. Supervisory responsibility for these offenses rests with the Computer Crime and Intellectual Property Section of the Criminal Division.

See the following sections of the Criminal Resource Manual for an overview of the criminal sanctions against illegal electronic surveillance, including related definitions and terms

Criminal Sanctions for Illegal Electronic Surveillance	Criminal Resource Manual at 1040
Investigative Jurisdiction and Supervisory Responsibility	Criminal Resource Manual at 1041
Legislative History	Criminal Resource Manual at 1042
Definition -- "Wire Communication"	Criminal Resource Manual at 1043
Definitions -- "Oral Communication"	Criminal Resource Manual at 1044
Definition -- "Electronic Communication"	Criminal Resource Manual at 1045
Definition -- "Intercept"	Criminal Resource Manual at 1046
Definition: "Electronic, Mechanical, or Other Device"	Criminal Resource Manual at 1047
Definition -- "Person"	Criminal Resource Manual at 1048

Definition -- "Contents"	Criminal Resource Manual at 1049
Scope of 18 U.S.C § 2511 Prohibitions	Criminal Resource Manual at 1050
"Intentional" State of Mind	Criminal Resource Manual at 1051
Elements of Section 2511 Offenses	Criminal Resource Manual at 1052
Exceptions to the Prohibitions Against Intercepting Communications -- Interceptions by Providers of Wire or Electronic Communications Services	Criminal Resource Manual at 1053
Exceptions to the Prohibitions-- Consensual Law Enforcement Interceptions	Criminal Resource Manual at 1054
Exceptions to the Prohibitions -- Other Consensual Interceptions	Criminal Resource Manual at 1055
Exceptions for the Interception of Certain Communications	Criminal Resource Manual at 1056
Other Exceptions	Criminal Resource Manual at 1057
Penalties	Criminal Resource Manual at 1058
Use of the Contents of Illegally Intercepted Communications Against the Interceptor	Criminal Resource Manual at 1059
Scope of 18 U.S.C § 2512 Prohibitions	Criminal Resource Manual at 1060
Unlawful Access to Stored Communications -- 18 U.S.C. § 2701	Criminal Resource Manual at 1061
Unauthorized Installation or Use of Pen Registers and Trap and Trace Devices -- 18 U.S.C. § 3121	Criminal Resource Manual at 1062
Providing Notice of Electronic Surveillance -- 18 U.S.C. § 2232(c)	Criminal Resource Manual at 1063
Injunctions Against Illegal Interception -- 18 U.S.C. § 2521	Criminal Resource Manual at 1064
Interference With the Operation of a Satellite -- 18 U.S.C. § 1367	Criminal Resource Manual at 1065
Interception of Radio Communications -- 47 U.S.C. § 605	Criminal Resource Manual at 1066
Unauthorized Reception of Cable Service -- 47 U.S.C. § 553	Criminal Resource Manual at 1067
Violation of FCC Regulations -- 47 U.S.C. § 502	Criminal Resource Manual at 1068

9-60.202 Illegal Electronic Eavesdropping -- Prosecution Policy

The criminal prohibitions against illegal electronic eavesdropping contained in Title III are part of the same act which permits federal law enforcement officers to engage in court-authorized electronic surveillance. Congress viewed the criminal sanctions and the court authorization provisions as two sides of the same coin. The retention of the government's authorization to engage in court-authorized electronic surveillance may depend on its vigorous enforcement of the sanctions against illegal electronic eavesdropping. Accordingly, it is the Department's policy to vigorously enforce these criminal prohibitions.

The Department's overall prosecutive policy under 18 U.S.C. § 2511 is to focus primarily on persons who engage or procure illegal electronic surveillance as part of the practice of their profession or as incident to their business activities. Less emphasis should be placed on the prosecution of persons who, in the course of transitory situations, intercept communications on their own without the assistance of a professional wiretapper or eavesdropper. This does not mean that such persons are never to be prosecuted, but simply that this type of prosecution is not a major thrust of the Department's enforcement program.

Most illegal interceptions fall into one of five categories: (1) domestic relations, (2) industrial espionage, (3) political espionage, (4) law enforcement, and (5) intra-business. The largest number of interceptions, more than 75 percent, are in the domestic relations category. It is the Department's policy to vigorously investigate and prosecute illegal interceptions of communications which fall within the industrial and political espionage, law enforcement, and intra-business categories. Generally such violations will have interstate ramifications which will make federal prosecution preferable to state prosecution. Nevertheless, in cases where the federal interest is slight, it may be appropriate to defer to state prosecution.

Illegal interceptions arising from domestic relations disputes generally present less of a federal interest and, therefore, local prosecution is more appropriate. However, this does not mean that federal prosecutors should abdicate responsibility for prosecuting such interceptions. Indeed, in view of the preponderance of this kind of interception, no enforcement program can be effective without the initiation of some prosecutions for deterrence purposes. United States Attorneys should develop effective liaison with local prosecutors in order to convince them to shoulder their share of the burden.

Within the category of domestic relations violations, primary attention should be given to those instances in which a professional is involved, such as a private detective, attorney, moonlighting telephone company employee, and supplier of electronic surveillance devices. United States Attorneys should feel free to pursue these cases or refer them to local prosecutors; however, no professional should escape prosecution when a prosecutable case exists.

Domestic relations violations which do not involve a professional interceptor are the lowest priority cases for federal prosecution. Although local prosecution is normally preferable, when local prosecutors are unwilling to pursue the case, resort to federal prosecution may be appropriate. Nevertheless, violations of this type will sometimes prove to be of insufficient magnitude to warrant either federal or state prosecution. In such cases, other measures may prove sufficient, for example, a civil suit for damages (18 U.S.C. § 2520), suppression of evidence (18 U.S.C. § 2515), or forfeiture of the wiretapping or eavesdropping paraphernalia (18 U.S.C. § 2513).

Disturbed persons often suspect that they are the victims of illegal interceptions. Consequently, a complaint which is based solely on suspicious noises heard on the telephone normally does not merit further investigation if the initial line check fails to produce independent evidence of a tap.

9-60.203 State Laws

Title III does not preempt the authority of the states to legislate concerning the interception of communications. The protection of privacy is as much a matter for local concern as protection of persons and property. Accordingly, the efforts of federal law enforcement personnel should supplement, not supplant, local action.

United States Attorneys should review the applicable statutes in their states. When there is no statute or when the existing statutes are inadequate, United States Attorneys should work through their federal-state law enforcement committees to obtain the enactment of appropriate legislation. When suitable state legislation exists but is not sufficiently used by local prosecutors, United States Attorneys should make efforts to stimulate local enforcement.

9-60.262 Prosecutive Policy -- 18 U.S.C. § 2512

Flagrant violators of 18 U.S.C. § 2512 should be prosecuted vigorously, especially violators who possess such devices in order to engage in electronic surveillance as a business.

Less culpable first offenders and those who violate the statute because of ignorance of the law may be appropriate subjects for more lenient disposition. In some cases a warning may be sufficient. Nevertheless, in

all cases except, perhaps, for minor advertising violations, the United States Attorney's Office should require that the prohibited device either be surrendered voluntarily to the FBI or forfeited pursuant to 18 U.S.C. § 2513.

9-60.300 Extortion

Overview -- Interstate and Foreign Extortion	Criminal Resource Manual at 1069
Investigative Jurisdiction in Extortion Cases	Criminal Resource Manual at 1070
Supervisory Authority in Extortion Cases	Criminal Resource Manual at 1071
Special Considerations in Proving a Threat	Criminal Resource Manual at 1072

9-60.400 Criminal Sanctions Against Illegal Electronic Surveillance -- The Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. § 1809

The Foreign Intelligence Surveillance Act -- 50 U.S.C. § 1809	Criminal Resource Manual at 1073
Investigative Jurisdiction	Criminal Resource Manual at 1074
50 U.S.C. § 1809 -- Elements of the Offense	Criminal Resource Manual at 1075
The Intent Requirement	Criminal Resource Manual at 1076
Electronic Surveillance	Criminal Resource Manual at 1077
Persons Covered by 50 U.S.C. § 1809(a)	Criminal Resource Manual at 1078
Penalties	Criminal Resource Manual at 1079
Providing Notice of Electronic Surveillance	Criminal Resource Manual at 1080

Supervisory responsibility for prosecutions involving Section 1809 rests with the Computer Crime and Intellectual Property Section of the Criminal Division.

9-60.500 Criminal Solicitation

Overview of Solicitation	Criminal Resource Manual at 1081
Investigative Jurisdiction	Criminal Resource Manual at 1082
Supervisory Authority	Criminal Resource Manual at 1083
Elements of Solicitation	Criminal Resource Manual at 1084
Indictment Form -- Solicitation to Commit a Crime of Violence	Criminal Resource Manual at 1085
Strongly Corroborative Circumstances	Criminal Resource Manual at 1086

9-60.700 Hostage Taking (18 U.S.C. § 1203) -- Prosecution Policy

It is the view of the Department of Justice that most hostage taking matters that arise within the United States are best handled by State and local authorities. However, there may at times be situations in which Federal involvement is appropriate (e.g., if the hostage is a Federal official or an international guest, the party against whom a demand is made is the United States, the perpetrators are international terrorists, etc.). Because of the strong preference for State and local handling of hostage taking matters within the United States, attorneys for the government should discuss a proposed prosecution with the Criminal Division prior to its initiation. In cases of hostage taking outside the United States, other factors, such as legal issues regarding the exercise of

extraterritorial jurisdiction, foreign policy considerations, and costs, are involved. Therefore, in cases involving an assertion of extraterritorial jurisdiction, it is mandatory that attorneys for the government seek approval from the Criminal Division prior to the initiation of a proposed prosecution. *See* USAM 9-2.136.

Investigative jurisdiction on hostage taking matters is with the Federal Bureau of Investigation (FBI). The Terrorism and Violent Crime Section (TVCS) has supervisory authority. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the following sections of the Criminal Resource Manual for discussions regarding the crime of hostage taking

Discussion of the Offense of Hostage Taking	Criminal Resource Manual at 1101
Hostage Taking -- Gravamen of the Offense	Criminal Resource Manual at 1102
Jurisdictional Requirements -- 18 U.S.C. Sec. 1203(b)	Criminal Resource Manual at 1103

9-60.711 Prosecution Policy in Hostage Taking Cases When the Death Penalty is Authorized by Statute

The Federal Death Penalty Act of 1994 amended Title 18, United States Code, section 1203 to authorize imposition of the death penalty or life imprisonment when death results from a hostage taking covered by the statute. *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, Tit. VI, § 60003(a)(10), 108 Stat. 1796, 1969 (1994). In any case where a defendant is charged with a hostage taking offense for which the death penalty can be imposed, the United States Attorney is required to follow the procedures set out in USAM 9-10.000 and transmit to the Attorney General the information required by those provisions, regardless of whether he or she actually intends to seek the death penalty.

9-60.800 Special Forfeiture of Collateral Profits of Crime ("Son of Sam")

Questions about special forfeitures of the collateral profits of crime under 18 U.S.C. §§ 3681 and 3682 should be directed to the Asset Forfeiture and Money Laundering Section (202) 514-1263. Further information is available in the Criminal Resource Manual at 1104 (Summary of Special Forfeiture Statute) and 1105 (First Amendment Problems of "Son of Sam" Laws).

9-60.900 Murder-for-Hire -- 18 U.S.C. § 1958

The proper investigative agency on murder-for-hire cases is the Federal Bureau of Investigation. Terrorism and Violent Crime Section (TVCS) has supervisory jurisdiction over murder-for-hire offenses. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the Criminal Resource Manual for a discussion of the following issues regarding murder-for-hire

Approval Considerations for Murder-for-Hire Indictments	Criminal Resource Manual at 1106
Murder-for-Hire -- The Offense	Criminal Resource Manual at 1107
Indictment Form	Criminal Resource Manual at 1108
Sample Jury Instruction	Criminal Resource Manual at 1109

9-60.910 Prosecution Policy and the Death Penalty

Prior approval for the initiation of a criminal prosecution under Title 18, United States Code, Section 1958, either by indictment or information, is not required. However, if the death penalty may be applicable, appropriate Department of Justice approval must be obtained. *See* approval guidelines at USAM 9-10.000. The United States Attorney must transmit to the Attorney General the information required by that Chapter, regardless of whether he or she intends to seek the death penalty.

9-60.1000 Carjacking -- 18 U.S.C. § 2119

The Federal Bureau of Investigation (FBI) has been tasked with the authority to investigate violations of the carjacking statute (18 U.S.C. § 2119). The Terrorism and Violent Crime Section (TVCS) has supervisory authority for the carjacking statute. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the Criminal Resource Manual for a discussion of the following issues regarding carjacking

Carjacking Statute	Criminal Resource Manual at 1110
Elements of Carjacking	Criminal Resource Manual at 1111
Constitutionality of the Carjacking Statute	Criminal Resource Manual at 1112
Enactment of the Carjacking Statute and Congressional Power	Criminal Resource Manual at 1113
Double Jeopardy Challenge when 18 U.S.C. §§ 2119 and 924(c) are Charged	Criminal Resource Manual at 1114
Sample Indictments	Criminal Resource Manual at 1115

9-60.1010 Prosecution Policy -- Carjacking Cases

The offense of motor vehicle theft was traditionally an offense that was prosecuted by State and local law enforcement agencies. In view of the increase of motor vehicle theft and the use of violence in connection with that offense, the Attorney General was directed by the Congress to have the Federal Bureau of Investigation (FBI) and the United States Attorneys' Offices cooperate with State and local officials to investigate carjacking, and, when appropriate and consistent with prosecutorial discretion and resources, prosecute violators in Federal court.

9-60.1015 Department Approval When Death Penalty is Applicable

In carjacking cases in which the Federal death penalty may be applicable, the United States Attorney is required to follow the procedures set forth at USAM 9-10.000. The approval of the Attorney General is necessary to seek the death penalty.

9-60.1100 Violence Against Women Act

The Violence Against Women Act (VAWA), passed as part of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, Title IV, § 40221(a), 108 Stat. 1926, created Federal statutes to prosecute domestic violence in certain situations involving firearms or interstate travel or activity. While domestic violence remains primarily a matter of State and local jurisdiction, prosecutors are encouraged to use the criminal provisions of VAWA in appropriate cases. Factors to be considered are 1) the adequacy of State penalties for domestic violence; for example, out-dated statutes or early parole may provide an inadequate remedy; 2) the interstate nature of the particular offense may make it difficult for local law enforcement to gather evidence from another State; and 3) the potential release of the defendant on bond since some States do not have pre-trial detention statutes. Prosecutors are reminded that 18 U.S.C. § 2263 requires that at any detention hearing

held pursuant to 18 U.S.C. § 3142, the "victim shall be given an opportunity to be heard regarding the danger posed by the defendant."

Essential to the effective implementation of the VAWA provisions is coordination with and education of State and local officials. Efforts should be made through your violent crime working groups or Law Enforcement Coordinating Committees to educate state and local counterparts on these provisions, as their assistance, particularly in working with local judges to fashion domestic violence protective orders, is critical.

Violations of the Violence Against Women Act (VAWA), 18 U.S.C. §§ 2261 *et seq.*, are investigated by the Federal Bureau of Investigation (FBI). The Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF) has primary investigative jurisdiction for offenses under the Federal firearms statute (18 U.S.C. § 922); however, the FBI may exercise investigative jurisdiction over violations of this statute when such violations are ancillary to investigations within its jurisdiction. The Terrorism and Violent Crime Section (TVCS) exercises supervisory authority over the criminal enforcement aspect of the Violence Against Women Act (VAWA) statutes. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the Criminal Resource Manual for a discussion of the following issues relating to this topic

Prosecutions Under 18 U.S.C. § 922(g)(8)	Criminal Resource Manual at 1116
Restrictions on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence	Criminal Resource Manual at 1117
Prosecutions Under 18 U.S.C. § 2261(a)(1)	Criminal Resource Manual at 1118
Prosecutions Under 18 U.S.C. § 2261(a)(2)	Criminal Resource Manual at 1119
Prosecutions Under 18 U.S.C. § 2262	Criminal Resource Manual at 1120
Penalties Under 18 U.S.C. §§ 2261 and 2262	Criminal Resource Manual at 1121

9-60.1112 Restriction on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence (18 U.S.C. 922(g)(9))

In the fall of 1996, Congress enacted an amendment (the Lautenberg Amendment) to the Federal Gun Control Act of 1968 which banned the possession of firearms by individuals convicted of a "misdemeanor crime of domestic violence," as defined in the statute. This new provision was codified at 18 U.S.C. § 922(g)(9) and does not contain an exemption for law enforcement or military personnel. The Criminal Division sent all United States Attorneys' Offices a memorandum containing a discussion of the provisions of 18 U.S.C. § 922(g)(9), as well as the Department's prosecution policy. The memorandum is contained in the Criminal Resource Manual at 1117.

In determining whether a particular case merits federal prosecution under 18 U.S.C. § 922(g)(9), prosecutors should consider the following factors:

- the date of the previous conviction;
- under what circumstances the firearm was obtained;
- whether there are indications of current potential for violence (*i.e.*, recent incidents of domestic violence would be a stronger argument for prosecution than if a number of years had passed since any domestic problems had occurred);
- alternatives available to federal prosecution (state prosecutions, voluntary removal of the weapons);
- whether the potential defendant was "on notice" that his/her possession of a firearm was illegal;

- whether the potential defendant had made any false statements in obtaining the firearm.

Even if a determination is made that prosecution is not warranted, steps should be taken to assure that the firearm is removed from the possession of the individual prohibited from possessing firearms.

9-60.1200 Civil Disturbances and Riots

United States Attorneys are required to consult with the Terrorism and Violent Crime Section of the Criminal Division prior to instituting grand jury proceedings, filing an information, or seeking an indictment of a violation of 18 U.S.C. §§ 231-233, 2101, 2102.